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Rural Affairs, Islands and Natural Environment Committee

Stage 1 report on the Hunting with Dogs (Scotland) Bill



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Rural Affairs, Islands and Natural Environment Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Rural Affairs and Islands.



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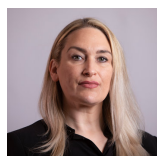
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The Bill

1. The Bill was introduced in the Scottish Parliament on 24 February 2022 by Michael Matheson, Cabinet Secretary for Net Zero, Energy and Transport.
2. The Bill follows the Scottish Government's commissioning of a review of the 2002 Act by Lord Bony, completed in 2016,ⁱ and a subsequent consultation of key stakeholders on the recommendations of the review held in 2017-18.ⁱⁱ
3. Information about the Bill is set out in the policy memorandum.ⁱⁱⁱ Further and more detailed information about the Bill's provisions is set out in the SPICe Bill briefing.^{iv} The SPICe bill briefing also details the background to the Bill, including the 2002 Act, existing legislation in England and Wales, the Bony review and Scottish Government pre-legislative consultations.
4. The policy memorandum published to accompany the Bill states the purpose of the Bill is to repeal and replace the Protection of Wild Mammals (Scotland) Act 2002 ("the 2002 Act") which makes it an offence to hunt a wild mammal using a dog in Scotland except in limited specified circumstances. The policy memorandum states the Bill has been introduced to "address widespread concerns that foxes and other wild mammals are being hunted (and killed) in contravention of the intention of the 2002 Act".
5. The policy memorandum goes on to state the Bill's main policy objectives are—
 - to broadly replicate the core provisions of the 2002 Act, thereby maintaining the offence to chase and/or kill a wild mammal using a dog, but to address the inconsistencies and ambiguities in the language of the 2002 Act to make the law easier to understand and to enforce;
 - to limit the number of dogs that can be used to search for, stalk or flush wild mammals from cover above ground to two;
 - to introduce a licensing regime for the use of more than two dogs to search for, stalk or flush wild mammals above ground in certain limited circumstances;
 - to limit the number of dogs that can be used to search for or flush foxes or mink from cover below ground to one; and
 - to prohibit the activity known as trail hunting (the activity of directing a dog to find and follow an animal-based scent).

i Scottish Government. (2016) [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#) .

ii Scottish Government. (2021) [Use of dogs to control foxes and other wild mammals: consultation](#) .

iii [Hunting with Dogs \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 6 (2022)).

iv Scottish Parliament Information Centre. (2022) [The Hunting with Dogs \(Scotland\) Bill](#). SPICe Briefing SB 22/28.

6. In her opening remarks to the Committee, Mairi McAllan, Minister for Environment and Land Reform, set out the Scottish Government's policy intention that the Bill would address concerns that wild mammals continue to be hunted and killed by dogs in contravention of the 2002 Act—
- ” Although it has been unlawful for 20 years, we know that mammals continue to be chased and killed by packs of dogs in Scotland, whether inadvertently when people undertake management or deliberately when people participate in illegal activities such as hare coursing. My intention is to ensure that what has been unlawful for 20 years cannot persist and to deliver legislation that clearly sets out the purposes for which dogs can be used and the conditions that must be adhered to when they are used.”^v
- ” As well as clarifying the legal position, the bill introduces a two-dog limit for searching for, stalking and flushing wild mammals. That is an important additional safeguard to reduce the risk of foxes and other wild mammals being chased and killed by dogs.”^{vi}
- ” The principal aim is to have clarity of expression and understanding, not only for those who seek to use dogs in pursuit of legitimate activities but for law enforcement.”^{vii}
7. The Minister further stated that the “Bill is principally about pursuing the highest possible animal welfare standards in Scotland, but on the understanding that we are a rural nation and access to legitimate control must be possible”.^{viii}

^v Rural Affairs, Islands and Natural Environment Committee. [Official Report, 29 June 2022](#) , Col 1.

^{vi} Rural Affairs, Islands and Natural Environment Committee. [Official Report, 29 June 2022](#), Col 2.

^{vii} Rural Affairs, Islands and Natural Environment Committee. [Official Report, 29 June 2022](#), Col 4.

^{viii} Rural Affairs, Islands and Natural Environment Committee. [Official Report, 29 June 2022](#), Col. 2.

Stage 1 scrutiny

8. The Parliamentary Bureau referred the Bill to the Committee for Stage 1 scrutiny on 9 March 2022. The Committee considered and agreed its scrutiny approach on 30 March 2022.
9. The Committee launched a call for views on the Bill on 1 April 2022. The call for views consisted of a detailed questionnaire, aimed at professional organisations and stakeholders, and an online survey setting out a shorter set of questions. The purpose of the survey was to provide an opportunity for respondents, especially individuals, who wished to set out their support or opposition to the Bill but did not wish to make a more-lengthy written response. The Committee received 71 responses to the detailed questionnaire and 2,692 submissions to the survey.^{ix}
10. With regard to general support or opposition to the Bill, the views of respondents to the call for views detailed questionnaire were divided fairly evenly—
 - nine organisations supported the Bill: OneKind, Humane Wildlife Solutions, Scottish Animal Welfare Commission, Scottish SPCA, Animal Aid, League Against Cruel Sports, Wild Animal Welfare Committee, Scottish Badgers, and Police Scotland;
 - ten organisations opposed the Bill: Scottish Countryside Alliance, Scottish Gamekeepers Association, National Working Terrier Federation, British Association for Shooting and Conservation, Strathspey Estates, Kincardineshire Foxhounds, Game and Wildlife Conservation Trust, Scottish Land and Estates, Scottish Association for Country Sports, and the Veterinary Association for Wildlife Management;
 - two organisations were neutral on the Bill: Law Society and the British Veterinary Association;
 - National Farmers Union Scotland selected “don’t know”; and
 - RSPB Scotland did not respond to this question.
11. Of individuals who responded to the call for views, 7 supported the Bill, 33 opposed the Bill, 4 were neutral, and 4 responded “don’t know”.
12. The survey data is based on 2,692 self-selecting respondents and is not representative of public opinion, but rather gives a snapshot of some of the views the public have about the Bill. There was significant interest from the Scottish Borders, Highlands, Dumfries and Galloway, and outwith Scotland, with 32% of respondents indicating that they lived outwith Scotland. Many of the provisions in the Bill were opposed by those in favour of the Bill and supported by those against the Bill. This was the case, for example, on the issue of whether the exceptions create “loopholes” or signify “compromise”. Conversely, many with overall concerns about the Bill were supportive of the exceptions. Some provisions, such as the ban on trail hunting or the introduction of deprivation orders, were generally supported

^{ix} Rural Affairs, Islands and Natural Environment Committee. [Published responses to the call for views on the Hunting with Dogs \(Scotland\) Bill](#).

by those in favour of the Bill and opposed by those against the Bill.^x

13. The Committee agreed a series of oral evidence sessions and took evidence from a range of stakeholders and enforcement bodies, as well as from Lord Bony and the Scottish Government. Further information about the Committee's oral evidence sessions can be found in Annex A and on the Committee's web pages.^{xi}
14. In addition, the Committee was invited to visit the Lauderdale Hunt kennels to meet the huntsman, tour the kennels and see a demonstration of the hounds. The invitation was received after the Committee's evidence taking had concluded and has not, therefore, been considered as part of the stage 1 inquiry. The invitation was sent, and visit scheduled, in parliamentary recess and the Convener and clerk to the committee attended.
15. The Committee thanks all respondents for their written evidence or responses to the online survey and to the witnesses for giving evidence.

^x Rural Affairs, Islands and Natural Environment Committee. [Summary of short survey responses to the call for views on the Hunting with Dogs \(Scotland\) Bill.](#)

^{xi} Rural Affairs, Islands and Natural Environment Committee. [Hunting with Dogs \(Scotland\) Bill stage 1.](#)

Consideration by other committees

Consideration by the Finance and Public Administration Committee

16. A financial memorandum (FM), setting out the costs expected to be associated with implementing the Bill, was published to accompany the Bill.
17. As with all Bills, the Finance and Public Administration Committee invited written evidence on the FM and four responses were received.^{xii}
18. The Finance and Public Administration Committee agreed to forward the submissions received to the lead committee and to take no further action itself.

Consideration by the Delegated Powers and Law Reform Committee

19. The Bill confers two powers to make subordinate legislation on the Scottish Ministers^{xiii} and a delegated powers memorandum (DPM) was published to accompany the Bill.^{xiv}
20. The DPM was considered by the Delegated Powers and Law Reform Committee (DPLRC) which reported on the Bill on 16 March 2022.^{xv} The DPLRC's conclusions and recommendations are reflected in the main body of this report.

^{xii} Finance and Public Administration Committee. [Published responses to the call for views on the Hunting with Dogs \(Scotland\) Bill Financial Memorandum](#).

^{xiii} Powers for the Scottish Ministers to make subordinate legislation are included at— s21 – power to make any incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of or in connection with the Bill; s26 – power to commence provisions in this Bill (other than sections 21 (ancillary provision), 26 (commencement) and 27 (short title) which come into force on the day after Royal Assent) on such day as they may appoint by regulations.

^{xiv} [Hunting with Dogs \(Scotland\) Bill. Delegated Powers Memorandum](#) (SP Bill 12-DPM, Session 6 (2022)).

^{xv} Delegated Powers and Law Reform Committee. 19th Report, 2022 (Session 6). [Hunting with Dogs \(Scotland\) Bill](#) (SP Paper 139).

Part 1 - HUNTING A WILD MAMMAL USING A DOG

Sections 1 and 2 – Offences for hunting a wild mammal using a dog

21. Sections 1 and 2 create the offences of hunting using a dog, if none of the exemptions set out in later sections of the Bill apply. Section 1 makes it an offence to hunt a wild mammal using a dog and section 2 makes it an offence for an owner or occupier of land to knowingly cause or permit another person to hunt a wild mammal on that land using a dog.
22. These offences replicate the provisions of the 2002 Act with updated language to “address the inconsistencies and ambiguities in the language of the 2002 Act to make the law easier to understand and to enforce”.^{xvi} At the Committee's request, the Minister wrote to provide further information detailing these inconsistencies and ambiguities in the 2002 Act.^{xvii} This report does not attempt to comment on how each and every inconsistency and ambiguity identified in the 2002 Act has been addressed by the Bill but highlights issues which were specifically drawn to the Committee's attention.
23. Commenting upon the changes made to the language and definitions in the Bill, Lord Bonomy supported the decision taken to “draft a Bill that repeals the whole of the previous legislation and puts something new in its place”. He also stated, “I regard the Bill as a very well-crafted piece of legislation” on the basis that—

” “it solves the problems that I identified about the loose and variable use of language. It makes everything much clearer and simpler, which, in itself, should be a great incentive for better enforcement of the law.”^{xviii}
24. A number of stakeholders agreed that the wording of the Bill was clearer than that used in the 2002 Act and, therefore, would likely be easier to interpret and enforce.

The Committee did not consider how each and every inconsistency and ambiguity identified in the Protection of Wild Mammals (Scotland) Act 2002 has been addressed by the Bill but focused on those which were specifically drawn to the Committee's attention. The Committee notes many stakeholders' views that the Bill addresses many of these perceived inconsistencies and ambiguities.

Offence of hunting a wild mammal using a dog (section 1(1))

^{xvi} Policy Memorandum, paragraph 6.

^{xvii} Minister for Environment and Land Reform. [Written submission](#), 24 August 2022.

^{xviii} Rural Affairs, Islands and Natural Environment Committee. [Official Report, 15 June 2022](#), Col 41.

25. The 2002 Act provides that “a person who deliberately hunts a wild mammal with a dog commits an offence”. The Bonomy Report drew particular attention to the inclusion of ‘deliberately’, arguing its addition was superfluous as, effectively, it was not possible to inadvertently hunt a wild mammal.^{xix} The Bonomy Report also stressed that the inclusion of ‘deliberately’ set the test for proof of an offence “very high or, at the very least, complicated the interpretation of the test unduly, by creating the impression that something more than evidence of the hounds apparently acting under the control and direction of the huntsman when they run in a line chasing a fox is required to provide sufficient evidence of the commission of an offence”.^{xx}
26. The word ‘deliberately’ has been omitted from the Bill and, instead, section 1(4) makes it an offence for a person to ‘hunt a wild mammal using a dog’. The bill team clarified that “we have introduced the phrase “using a dog” to make it clear that we are talking about the person who is doing the hunting and not the dog”.^{xxi}
27. In evidence to the Committee, Lord Bonomy stated that “the word ‘deliberately’ was causing a problem, so its removal is a good idea”.^{xxii}
28. The Committee also considered whether a dog walker could be held liable for the offence if their dog took up a scent and chased a wild mammal, whilst being exercised.
29. The Law Society of Scotland gave its view that the section 1(4) definition of “using a dog” would apply “even if the dog is not under the persons control or direction” and it suggested the requirement for intent behind the act of hunting is not made clear. It suggests that section 1 be amended to “contain a clause which conveys that the person should know or ought to have known that hunting a wild animal was the intended use of the dog”.^{xxiii} Police Scotland argued, however, that “a differentiation between people who are hare coursing and average dog walkers who are taking reasonable steps to keep the dogs under control can be factored in”.^{xxiv}
30. When asked about this at the Committee's meeting on 29 June, the Minister stated the key issue is whether the person in control of the dog intended it to hunt. She explained—

^{xix} Policy Memorandum, paragraphs 17-26.

^{xx} Scottish Government. (2016) Report of the Review of the Protection of Wild Mammals (Scotland) Act 2002, paragraph 5.22.

^{xxi} Rural Affairs, Islands and Natural Environment Committee. [Official Report, 1 June 2022](#) , Col 3.

^{xxii} Rural Affairs, Islands and Natural Environment Committee. [Official Report, 15 June 2022](#) , Col 42.

^{xxiii} Rural Affairs, Islands and Natural Environment Committee. [Official Report, 22 June 2022](#) , Col 3.

^{xxiv} Rural Affairs, Islands and Natural Environment Committee. [Official Report, 22 June 2022](#) , Col 3.

- ” “If someone is walking their dog, and it chases a rabbit, hare or fox and kills it, the person has not committed a crime under the legislation, because they were not undertaking intentional hunting. That is not to say that if they repeatedly actively allowed their dog to do that, it could not eventually constitute something more, but if someone is walking their dog and it breaks free and chases and kills a mammal, that is not a crime under the Bill.”^{xxv}

The Committee notes the concerns raised with it regarding the possibility of dog walkers being held liable for the offence where a dog chases a wild mammal whilst being exercised. The majority of the Committee is reassured, however, by the evidence it has heard that this would not constitute an offence under the Bill.

xxvi

Definition of hunting (section 1(3))

31. Section 1(3) of the Bill gives an open-ended definition of ‘hunting’ as an activity which includes “searching for and coursing (and related expressions are to be construed accordingly)”. The Minister explained that a broad, non-exhaustive definition for hunting has been used so “it is deliberately not closing off what could constitute hunting”. She added it “all comes back to the fact that we found ourselves, with the 2002 Act, with interpretations being taken outside the Bill and prosecution and behaviour not following what was expected under the Bill”.^{xxvii}
32. OneKind, the SAWC and the League Against Cruel Sports felt that the definition of ‘hunting’ could be further clarified by including an expanded list of specific terms, such as ‘stalking’, ‘flushing’ or ‘coursing’. In its evidence, the COPFS highlighted that these undefined terms caused issues in some previous prosecutions.^{xxviii}
33. When asked about this, the Minister replied that “I think that ‘searching for’, ‘stalking’ and ‘flushing’ are terms that people readily understand and will understand as being part of the intentional act of hunting”.^{xxix} She went on to explain that, “where the natural meaning of a term is quite straightforward, we have tried not to unnecessarily enclose it in a definition, because we know that when we try to do exhaustive definitions, things will naturally be missed”. She went on to say, however, that expanding the non-exhaustive list “could be helpful”.^{xxx}

xxv Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 6.

xxvi Two members of the Committee were not reassured by the evidence the Committee heard that this would not constitute an offence under the Bill.

xxvii Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 5.

xxviii Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 11.

xxix Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 5.

xxx Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Cols 4-5.

The Committee notes some stakeholders' call for the Bill to include definitions of certain terms, such as 'hunting', 'searching for' or 'coursing' and the Minister's position that these are "terms that people readily understand" and a concern that, in setting an absolute definition, "things will naturally be missed". It is vital, however, this Bill does not repeat the ambiguities in definitions which were identified in the 2002 Act. Accordingly, the Committee would welcome further information from the Scottish Government around the definition of hunting to reassure it that these terms do not need to be further defined. It would be helpful if this information could be provided in advance of Stage 2.

Definition of wild mammal (section 1(3))

34. The 2002 Act definition of wild mammal includes 'a wild mammal which has escaped, or been released, from captivity, and any mammal which is living wild'. The 2002 Act definition does not include rabbits or rodents. The Bill replaces this definition with an animal which is living in a wild state or 'has been deliberately released from temporary or permanent human control'. The Bill's definition does include rabbits but not rats, mice or animals "living under temporary or human control".

Rabbits

35. The Policy Memorandum states the inclusion of rabbits is intended to address the issue identified by the Scottish Government's consultation that those suspected of hare coursing frequently use the cover that they are legally using dogs to hunt rabbits. Rabbits are included in the definition of wild mammal to "aid in the detection and enforcement of hare coursing offences by removing this activity as a potential cover".^{xxxii} Officials told the Committee that rabbits were also being included on welfare grounds.^{xxxiii}

36. The animal welfare organisations who submitted written evidence, as well as Police Scotland, were in favour of rabbits being included in the wild mammal definition, both on the grounds of further preventing hare coursing and on the grounds of the welfare of rabbits. For example, the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) told the Committee that there are more humane ways to control rabbits than "setting dogs on them". The SSPCA went on to state that "a lot of people think that, in all these sorts of activities, the dog kills the animal instantly. You might get away with that with mice or rats, but it is definitely not the case with foxes or even rabbits. Not all of them are instantly killed and, in any case, they also experience the fear of being chased."^{xxxiii}

37. In commenting on the inclusion of 'coursing' in the definition of 'hunting' in the Bill, the Scottish Animal Welfare Commission (SAWC) noted in written evidence that "coursing can be defined both as chasing by sight, rather than scent (i.e. using

^{xxxii} Policy Memorandum, paragraph 87.

^{xxxiii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 1 June 2022, Col 4.

^{xxxiii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 15.

lurchers or greyhounds, rather than fox hounds) and also simply as chasing or pursuing. However it is conducted, coursing is likely to impose unnecessary stress on a sentient wild mammal such as a rabbit or hare.”^{xxxiv}

38. Some stakeholders who submitted evidence, however, were generally opposed to the inclusion of rabbits on the basis that they are “a major pest species”^{xxxv} and the use of dogs is commonplace to control rabbit populations on agricultural land. Their concern was that the inclusion of rabbits would compromise their ability to control rabbit numbers effectively; the Scottish Game Keepers Association (SGA) explained that “one of the most efficient methods for flushing them from thick cover is to use trained dogs such as terriers or spaniels”^{xxxvi} and the National Working Terrier Federation (NWTF) was concerned the Bill would “criminalise legitimate pest control activities”.^{xxxvii}
39. Some stakeholders argued that banning the use of dogs to hunt rabbits was not a proportionate or appropriate solution to the problems of tackling hare coursing. The Scottish Countryside Alliance (SCA) argued that, “instead of tackling the hare coursing issue”, the Bill “is encompassing far more than is needed”.^{xxxviii} The SGA thought that, “as a defence against hare coursing, the provision is pretty spurious.”^{xxxix}
40. Some stakeholders argued, therefore, that the Bill should be amended to either remove rabbits from the definition of wild mammal or permit the use of dogs to hunt rabbits with the landowner's permission. The SGA thought this requirement would work because “hare coursing would be an activity that the land manager or farmer ... would not be aware of and would certainly not support, whereas rabbit control would be at the behest of, and probably at the payment of, the farmer or land manager”.^{xl}
41. The Minister stated that, while enforcement against hare coursing was one factor behind the inclusion of rabbits within the wild mammal definition, another consideration was to give rabbits the same level of animal welfare protection as hares. She was “clear that one of our policy decisions is that rabbits should be afforded the same protection as hares” and that the “significant welfare issues” when dogs chase and kill hares should also apply to rabbits.^{xli}

^{xxxiv} Scottish Animal Welfare Commission (SAWC). [Written submission to the call for views](#).

^{xxxv} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 5.

^{xxxvi} Scottish Gamekeepers Association. [Written submission to the call for views](#).

^{xxxvii} National Working Terrier Federation. [Written submission](#), 23 June 2022.

^{xxxviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 6.

^{xxxix} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 6.

^{xl} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 6.

^{xli} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 9.

42. The Committee also discussed the impact of the definition including rabbits on 'rough' or mixed shoots. These are activities, where, typically, a group of people hunt together using their own dogs to flush mixed game (birds and ground game). This is explored in more detail in the part of the report on section 6.

The Committee notes the Scottish Government's reasons for including rabbits in the definition of a wild mammal is to address concerns it is used as a cover for hare coursing and to prevent rabbits being chased and killed by dogs.

The Committee notes the views of animal welfare stakeholders that the inclusion of rabbits could address the concerns around hare coursing and animal welfare. The Committee also notes some stakeholders' view that there are more direct and effective methods of addressing the challenges of preventing hare coursing than making it an offence to use dogs to hunt rabbits.

The Committee asks that, before Stage 1, the Scottish Government sets out its understanding of how dogs are used to control rabbits in Scotland; to provide more detail about the animal welfare concerns around these methods in relation to rabbits; and to provide further information about what alternative methods of addressing hare coursing have been considered.

A minority of members believe that, to avoid unintended consequences, rabbits should not be included in the definition of a wild mammal. ^{xlii}

The Committee also makes further comments relating to the use of dogs to hunt rabbits later in the part of this report (section 6 exception for game shooting).

Rats and mice

43. Scottish Government officials explained that rats and mice had been excluded for the reason that, "because of the physiology of rats and mice, a well-trained terrier is probably capable of dispatching them in a more humane manner than some of the other legally permitted methods".^{xliii} The Game and Wildlife Conservation Trust queried whether the definition would affect options to control another non-native invasive rodent species living in a wild state, the grey squirrel.

The Committee is content with the reason given for not including rats and mice in

^{xlii} Two members did not agree that rabbits should be included in the definition of a wild mammal.

^{xliii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 1 June 2022*, Col 12.

the definition of wild mammal. The Committee asks the Scottish Government, however, to respond to specific questions regarding the use of dogs to hunt other rodents – such as the grey squirrel – which are included in the definition.

Penalties (sections 1(2) and 2(3))

44. The maximum penalties for the offences are set out in section 1(2) and section 2(3). The penalties in the 2002 Act were increased by the Animal and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 when a range of animal welfare offences were increased. The Bill remains in line with these 2020 changes.
45. The SSPCA put forward a view that the maximum penalty for offences under section 1 (imprisonment for up to 5 years and/or an unlimited fine) should also be available for offences under section 2.^{xliv}

Exceptions to the offences

46. The 2002 Act provides for a number of exceptions to the offence of hunting in certain specified circumstances. The exceptions in the 2002 Act are replaced with four revised exceptions which would allow a person to hunt wild mammals with dogs, so long as the hunting is for the specified purposes and if certain conditions are met.
47. The four new exceptions could be used for the following purposes—
 - the management of wild mammals above ground (section 3);
 - the management of foxes and mink below ground (section 5);
 - falconry, game shooting and deer stalking (section 6); and
 - environmental benefit (section 7).
48. The first condition which must be met is a limit on the number of dogs used when hunting. Whilst the 2002 Act does not place any limit on the number of dogs that can be used, the Bill introduces a limit for each exception. The Bill proposes a limit of two dogs for the section 3 exception for the management of wild mammals above ground, the section 6 exception for falconry, game shooting and deer stalking and the section 7 exception for environmental benefit. The Bill proposes a limit of one dog for the section 5 exception for the management of foxes and mink below ground.
49. The same limits on the number of dogs which can be used when hunting with dogs is in place in England and Wales under the Hunting Act 2004.
50. As an explanation for this policy change, the Policy Memorandum highlights Lord Bonomy's conclusion that "there is a basis for suspecting illegal hunting with dogs does take place and that, ... in around a fifth of cases where dogs are used to hunt

^{xliv} Scottish SPCA. [Written submission to the call for views.](#)

foxes, the foxes are killed by the dogs”.^{xlv} The Policy Memorandum goes on to state that the Bill would mitigate the risk of a person losing control of dogs within a larger pack and would, therefore, limit the risk of a wild mammal being caught and killed by a pack of dogs.^{xlvi}

51. The remaining conditions to be met are broadly the same for each exception; to ensure the dog(s) are kept under control; that reasonable steps are taken to prevent any dog(s) joining others to form a pack; and the landowner's permission has been given (or, in the case of the section 7 exception for environmental benefit, that powers of entry are provided under relevant wildlife legislation). The conditions also require, for the sections 3, 5 and 6 exceptions, that any wild mammal which is searched for, stalked or flushed is shot dead or killed by a bird of prey as soon as reasonably possible and also that, if a wild mammal has been injured rather than killed, reasonable steps are taken to kill it in a way which causes minimum possible suffering. For the section 7 exception for environmental benefit, the conditions require the wild mammal is either captured, shot dead or killed by a bird of prey as soon as reasonably possible or observed and then allowed to escape safely.

52. In its written evidence, the SAWC questioned the use of a bird of prey as a method of killing as one of the conditions for all four exceptions. It wrote that-

”We recommend deletion of 'or killed by a bird of prey'. [...] With regard to the management of wild mammals above ground, we cannot envisage a scenario where, in terms of animal welfare, killing a wild mammal by a bird of prey equates to, or improves on, prompt and efficient shooting. We are not aware that any welfare argument has been, or can be, made for flushing wild mammals from cover using dogs, then killing them with a bird of prey. The impact on the welfare of the hunted animal is likely to be similar whether killed by a dog or a bird of prey.”^{xlvii}

53. During its oral evidence, OneKind agreed, arguing this “is not a necessary or humane method” of dispatching a wild mammal that has been searched for, stalked or flushed from cover.^{xlviii}

The use of a bird of prey as a method of killing was not fully explored during the Committee’s Stage 1 inquiry but it is not clear to the Committee why birds of prey are one of the two permitted methods of killing under the Bill. The Committee asks the Scottish Government to set out its reasons for the use of a bird of prey as a method of killing in all four exceptions.

‘Exceptions to the exceptions’ – licensing schemes to permit the use of more than two dogs for the

^{xlv} Policy Memorandum, paragraph 30.

^{xlvi} Policy Memorandum, paragraph 32.

^{xlvii} SAWC, Written submission to the call for views.

^{xlviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 15 June 2022*, Col 38.

management of wild mammals above ground and for environmental benefit

54. Alongside the new limit on the number of dogs, the Bill would also introduce licensing schemes which would permit the use of more than two dogs in some circumstances. Scottish Government officials referred to these schemes as “an exception to an exception”.^{xlix} Section 4 provides a licence scheme for the section 3 exception for the management of wild mammals above ground and section 8 provides for a licence scheme for the section 7 exception for environmental benefit. The Bill does not provide for a licence scheme to use more than one dog for the section 5 exception for the management of foxes and mink below ground or for the use of more than two dogs for the section 6 exception for falconry, game shooting and deer stalking.
55. The Policy Memorandum states these licensing schemes have been included in the Bill to acknowledge that, in some circumstances, particularly on rough and hilly ground and in extensive areas of dense cover such as conifer woodlands, it may not always be possible to flush wild mammals from cover effectively using only two dogs.^l

Section 3 – exception: management of wild mammals above ground

56. Section 3 introduces an exception to the offence which would permit a person to use a dog to search for, stalk or flush from cover a wild mammal with the intention of killing it or to search for and retrieve a wild mammal which has been killed as a result of this activity.
57. Section 3(2) provides the purposes for when this exception could be used as: to prevent serious damage to livestock, woodland or crops; to prevent the spread of disease; and to protect human health. Section 3(3) sets out the conditions which must be met when using this exception; one condition is that only two dogs can be used for the activity, unless a section 4 licence has been granted.
58. The focus of the debate around this exception was on the two-dog limit and the ability to increase the number of dogs that can be used under the section 4 licensing scheme.

Two-dog limit

59. As set out previously, the Scottish Government's position is that a two-dog limit would mitigate the risk of a person losing control of one or more dogs within a larger pack and, therefore, limit the risk of a wild mammal being caught and killed by a pack of dogs.

^{xlix} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 1 June 2022*, Col 25.

^l Policy Memorandum, paragraphs 51-52.

60. Some stakeholders were opposed to the two-dog limit; they argued it would make flushing from cover more difficult and, therefore, hunting with dogs less effective. In its written evidence, the SCA stated that “clearly, if fox control is to be effective in Scotland, a restriction to two dogs would (as the League Against Cruel Sports has stated) make that impossible”. In oral evidence, the SCA stated the two-dog limit is “the most problematic issue”^{li} with the Bill and the SGA explained how a two-dog limit would make it more difficult to search for and flush from cover a wild mammal—

” “I want to be absolutely clear about the point that, if we were restricted to using one dog or two, that one dog or two would go into a plantation and not make enough commotion to properly frighten the fox. The fox would run round in circles all day. That is not good for the welfare of the fox or for the welfare of the dogs and certainly does not do the job that we are paid to do. Using a dog is important because ... [the dogs] run in a phalanx. Therefore, when the fox dodges left or right, it is immediately picked up. The commotion that the dogs create quickly persuades the fox that it is not safe for it to stay where it is and it will expose itself to the people with guns, who will quickly and humanely destroy it.”^{lii}

61. Some stakeholders challenged a number of assumptions behind the two-dog limit. First, they argued that a two-dog limit would create its own animal welfare concerns as two dogs could not – depending on the circumstances – effectively flush a wild mammal from cover. They argued this would tire both the dogs and wild mammal and cause the wild mammal prolonged stress in the process. They also questioned the basis for the limit being set at two dogs; by way of contrast, the SGA referred to the current and routine use of 20 to 24 dogs for predator control used by the Atholl and Breadalbane Fox Control Society foot pack where that number of dogs is used “not through any ad-hoc decision making but through experience”.^{liii}

62. Second, some stakeholders challenged the assumption that there was a risk of a person losing control of one or more dogs within a larger pack. The SGA described how packs of specially trained scenting dogs are controlled by their trainer and handler, saying “the dogs are all under the handler’s control, despite the fact that they might, at some points, be many hundreds of yards away from him”.^{liiv} The SGA concluded that “the element of error in our operation is very low indeed” and that “about 90% to 95% of the time the operation works as it is supposed to and these specially trained dogs do the job that they are there to do”.^{lv}

63. Some stakeholders felt, therefore, that the only way to continue to control predators using dogs if a two-dog limit was in place would be for practitioners to apply for a

li Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 31.

lii Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 11.

liii Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 25.

liiv Rural Affairs, Islands and Natural Environment Committee. *Official Report, 15 June 2022*, Col 11.

lv Rural Affairs, Islands and Natural Environment Committee. *Official Report, 15 June 2022*, Col 12.

section 4 licence.

64. Witnesses representing animal welfare organisations, however, supported the two-dog limit. They stated their general opposition to hunting with dogs but that they recognised that predator control is necessary and felt the Bill achieved the right balance between effectiveness and animal welfare. The SSPCA told the Committee it could “guarantee that reducing the number of hounds to two will reduce the chances of them catching and killing the fox”.^{lvi} The League Against Cruel Sports suggested that, based on the experiences in England and Wales following the 2004 Act, the two-dog limit would, effectively, end flushing to guns.^{lvii} A number of witnesses also emphasised the risks posed to other wildlife by packs of dogs.
65. In response to comments from some stakeholders that a larger pack of dogs can be effectively controlled and, therefore, do not pose a risk to wild mammals, the SSPCA stated it has “grave concerns” about the use of packs and questioned the ability to control a high number of dogs. It argued it is difficult to control a dog, especially where it picks up an animal scent, and told the Committee “keeping under control a dog that has been trained to go for a scent or to attack an animal is, unless you physically restrain it, damn near impossible”.^{lviii}
66. The Committee discussed the exception with the Minister, who stressed “the Government is pursuing the highest possible animal welfare standards, but it is necessarily seeking to find a balance” with the need, in certain circumstances, to be able to control wild mammals.^{lix} She later commented that the most important element of the exception was for the dog(s) to be under control as it is far less likely that a wild mammal will be chased and killed by a dog when there are only one or two dogs because their handler will be better able to control them.^{lx}
67. When asked about why the limit was to be two dogs, as opposed to another number, the Minister replied that “the limit is based on, first, the fact that it will substantially reduce the ability to chase and kill and, secondly, an assessment of what is possible with two dogs versus what people are seeking to use them for.”^{lxi} The Minister provided further information about how the two-dog limit was arrived at following her evidence to the Committee—

^{lvi} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 21.

^{lvii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 22.

^{lviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 16.

^{lix} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 3.

^{lx} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 15.

^{lxi} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 16.

” “I think it is self-evident that it is easier to keep control of a smaller number of dogs than a larger pack of dogs. Two is also the maximum number of dogs permitted in England and Wales.

The question therefore is what is the minimum number of dogs that can be used to carry out the flushing and searching activities permitted by the Bill. Discussions with stakeholders confirmed that many activities requiring the use of dogs to control wild mammals can continue to be carried out effectively using only two dogs, for example deer stalking or searching for invasive non-native species. I therefore believe that a two-dog limit is fair and reasonable as the default position.”^{ixii}

The Committee recognises the impact and consequences of serious damage to livestock, woodland and crops caused by wild mammal predation. The Committee, therefore, notes the intention of section 3 to continue to permit predation control by dogs whilst also prioritising animal welfare.

The Committee also notes the Scottish Government’s view, shared by some animal welfare organisations, that hunting with one or two dogs would allow wild mammals to be flushed from cover whilst also significantly reducing the likelihood of the dog handler losing control over the pack.

The Committee also notes, however, some stakeholders’ concerns about the proposed two-dog limit. These stakeholders told the Committee that two dogs could not effectively flush wild mammals from cover in all circumstances and terrain. They argued this could, in itself, create an animal welfare concern, prolonging flushing from cover and causing additional tiredness and stress for both the dogs and wild mammals.

Some of the Committee share these concerns about the impact of the two-dog limit. The Committee calls on the Scottish Government to address these concerns in a workable way through the proposed licensing scheme.

Section 4 – licence for use of more than two dogs in connection with section 3

68. Section 4 introduces a licence scheme to permit the use of more than two dogs to manage wild mammals above ground. The licensing scheme would be administered by Scottish Natural Heritage (known as NatureScot) on behalf of Scottish Ministers.
69. Section 4(4) sets out the requirements of the licensing scheme; amongst other provisions, the Bill states a licence would only be granted where NatureScot is

^{ixii} Minister for Environment and Land Reform. Written submission, 24 August 2022.

satisfied there is no effective alternative solution to using more than two dogs (section 4(4)(c)); that NatureScot would only permit the minimum number of dogs it is satisfied would achieve the purpose effectively (section 4(4)(d)); and that a licence would be granted for up to 14 days which must fall within a period of 14 consecutive days (section 4(4)(f)).

70. The Policy Memorandum goes on to state that the licensing provisions closely mirror the “established and well-understood approaches to licensing of wildlife management operations” set out in relevant legislation and that the detail of the schemes would be developed following consultation with stakeholders and accompanied by detailed guidance. Whilst NatureScot does not currently charge for licence applications, the Policy Memorandum refers to the Scottish Government's Shared Policy Programme with the Scottish Green Party which contains a commitment to review the wider species licensing system; the Bill is drafted in a way which would allow any future charges to be made for the licensing schemes.^{lxiii}
71. Some animal welfare organisations did not support the proposed licensing scheme, arguing that hunting with dogs should not be allowed in any circumstances or that hunting with more than two dogs should not be allowed in any circumstances.
72. As set out earlier in this report, however, some stakeholders argued that effective predator control with dogs could only continue with more than two dogs, under a section 4 licence. Lord Bonomy also argued that the licensing scheme would be the only way to make the two-dog limit “viable”.^{lxiv}
73. When it gave evidence, however, NatureScot emphasised the policy intention behind the Bill being to restrict the use of the exceptions and stated the necessity of the licensing scheme “striking the right balance between prescription – reducing the likelihood of relying on these licences – and flexibility is key for us”.^{lxv}
74. The Minister confirmed this position when she gave evidence; she told the Committee that—
- ” “I want the licensing scheme to be workable; I do not want people who ought to be entitled to use it to feel that they cannot do so, or to feel frustrated by the process. Equally, however, a licence has to be construed as the option that is available when there are no other options. That is how we will seek to design the scheme with stakeholders.”^{lxvi}
75. She went on to stress that “we cannot allow the system to become so weak that we are right back to where we were in 2002, with licences just being applied for readily”.^{lxvii}

^{lxiii} Policy Memorandum, paragraphs 64-68.

^{lxiv} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 45.

^{lxv} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Col 13.

^{lxvi} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 18.

^{lxvii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 24.

76. A number of issues relating to the licence scheme were raised over the course of the Committee's inquiry.

Requirement that a licence be granted to a particular person or category of persons – section 4(4)(a)

77. The SSPCA suggested clarification was required on the section 4(4)(a) requirement for a licence to be granted to a person or 'to a category of persons'. The SSPCA argued that a licence holder is responsible for ensuring the terms of the licence are met and, therefore, a named person is required to be accountable.^{lxviii}

Requirement to demonstrate 'no satisfactory alternative' – section 4(4)(c)

78. The Policy Memorandum explains this provision would mean an applicant would need to demonstrate "why other lethal solutions would not be effective, such as lamping or the use of two dogs ... and also demonstrate that they have considered non-lethal solutions which could include reinforced fencing or cooping the poultry at night".^{lxi} Scottish Government officials highlighted the 'no satisfactory alternative' provision already operates in many other licensing schemes.^{lxx}

79. Some stakeholders raised concerns about how this provision would work in practice. The SGA discussed some of the alternative forms of predator control—

” "People using rifles are not guaranteed to be any more quick, effective or accurate on every occasion. If you are using spotlights, there is, again, an element of error. There is also an element of error in using thermal kit."^{lxxi}

80. The Committee did take evidence over the course of its inquiry about other forms of predator control; whilst hunting with dogs is used in some parts of Scotland, the Committee was told that predator control is effectively undertaken in a number of other ways. NatureScot thought that "what we are talking about here is a relatively small proportion of fox control".^{lxxii}

81. RSPB Scotland told the Committee it does not use dogs to hunt predators and its "agreed method, under our vertebrate control policy (which largely adheres to the seven ethical principles of wildlife control) is that the shooting of foxes by a trained marksman is the most humane and, indeed, efficient method".^{lxxiii} RSPB Scotland told the Committee it considers lethal control always as a last resort, for example, using electric fencing as an alternative, but accepted this may not be "appropriate everywhere, but we can do it on our reserves because, often, the areas are smaller".^{lxxiv} RSPB Scotland did recognise that it did "relatively very little predator

^{lxviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Cols 33-34.

^{lxi} Policy Memorandum, paragraph 55.

^{lxx} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 1 June 2022, Col 30.

^{lxxi} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 8 June 2022, Col 12.

^{lxxii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Col 20.

control in Scotland", that "most of the vertebrate control [...] in Scotland is deer management" and undertaken in open ground-nesting bird habitats so it "does tend not to do much predator control in most of our woodland sites and scrub habitats".^{lxxv}

82. Animal welfare organisations argued the Bill presented an opportunity to re-think the solutions to the problem of wild mammal predation on agricultural land. The SSPCA told the Committee that "the Bill will not prevent a farmer from dealing with an animal that he perceives to be a pest, although it might change the way in which he does it".^{lxxvi} The League Against Cruel Sports argued that "a licensing scheme gives us an opportunity to make sure that we understand ... the problem that killing an animal is an attempt to solve and to make sure that it has been worked out how the situation will be improved by killing the animal and how that will continue to be monitored".^{lxxvii} OneKind questioned the "assumptions behind the Bill that foxes need routinely to be killed and that the use of dogs is a suitable way of doing that". It argued that "farmers need to be supported when it comes to any changes to wildlife management" and that "if we do not have enough effective and humane methods to control and manage wild animals, [...] it does not mean that we should just carry on doing what we are doing". OneKind also supported the use of the ethical principles of wildlife control and argued that "first of all, mitigation measures should be tried; if people need to resort to lethal control, other methods are preferable".^{lxxviii}
83. When asked about this, NatureScot highlighted that "the first point [...] is to ask whether we need to modify human behaviour" by asking what non-lethal methods or lethal methods that would not otherwise be an offence have been used and to demonstrate why they have not been effective in their circumstances.^{lxxix} NatureScot also explained that, in its role as licensing authority, it "will need to be absolutely satisfied that there is a clear licensable purpose – that there is evidence that there is something that we need to allow – and that there is no satisfactory alternative". It went on to argue that applicants would need to provide information about what alternatives they had implemented "before relying on something that would otherwise be an offence".^{lxxx}

^{lxxiii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 33.

^{lxxiv} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 39.

^{lxxv} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Cols 40-43.

^{lxxvi} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 15 June 2022*, Col 20.

^{lxxvii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 15 June 2022*, Col 32.

^{lxxviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 15 June 2022*, Col 12.

^{lxxix} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 24.

Requirement to set out the minimum number of dogs to be used

84. The Policy Memorandum states this condition recognises that larger packs of dogs increases the risk of a wild mammal being chased and killed and other wildlife being disturbed or harmed.^{lxxxix}
85. During its evidence, the SGA queried the extent to which NatureScot “would have the experience or ability to say any better than the man on the ground what the correct number of dogs or people would be” and stressed the importance of the dog handler/trainer’s knowledge and expertise in determining the number of dogs to use “on any particular day at any particular venue” and the local representatives who “know and understand the terrain in which they work”.^{lxxxii}

Requirement for a maximum 14-day licence period – section 4(4)(f)

86. The Policy Memorandum states that the days covered by the licence have to be within a period of 14 consecutive days but do not themselves need to be consecutive days – i.e., a licence for any three days between the 1st and 14th of a month – to provide some flexibility to take account of, for example, adverse weather conditions.^{lxxxiii}
87. Scottish Government officials told the Committee the 14-day period “strikes a balance between having a licensing system that is practical and preventing people from exploiting the system and using it as a way of carrying on the activities that are happening at the moment, which we know are resulting in wild animals being killed with dogs”.^{lxxxiv}
88. As set out earlier in this report, some stakeholders told the committee that hunting with dogs as a means of predator control could only effectively continue with more than two dogs and that, therefore, they anticipated having to apply for a licence on a regular basis. Referring to foot packs and professional hunting organisations which have a fixture list that runs over a six-month period; the National Farmers’ Union of Scotland (NFUS) and the SGA agreed. The SGA argued the proposal was “illogical”^{lxxxv} and that the associated administration would be “completely above and beyond everything that is reasonable”.^{lxxxvi} The SCA concluded that a 14-day licence “is just not workable”.^{lxxxvii}

^{lxxxix} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 22.

^{lxxxix} Policy Memorandum, paragraph 56.

^{lxxxii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Cols 12-13.

^{lxxxiii} Policy Memorandum, paragraph 57.

^{lxxxiv} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 1 June 2022*, Col 16.

^{lxxxv} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 13.

^{lxxxvi} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 14.

89. The SCA stated that “for the sector, ‘workable’ means something that is fair and accessible by everyone and that works well for everyone, not just individual sectors of people who control foxes or rabbits”.^{lxxxviii} Alternative licensing schemes put forward were a seasonal or a general licence and that these should be available to packs and other professional hunting organisations/practitioners, as well as to individuals.
90. Some stakeholders also suggested section 4 licences should run for two years, the same period as section 8 licences for environmental benefit, arguing that much of the predator control undertaken on land benefits biodiversity as much as agriculture.
91. The Minister stated the 14-day time period reflects what the Scottish Government has been told is the timescale necessary to undertake control measures using a dog.^{lxxxix} In a letter to the Committee after her evidence, the Minister confirmed that “limiting licences to a maximum of 14 days for the management of wild mammals above ground, for the specific purposes set out in the Bill, is one of the ways to ensure there are effective controls on the licensing regime”.^{xc}
92. The Minister also told the Committee that she was open minded to the time period if the view is that 14-days is not workable. She concluded that “after all, I do not want this not to work or its availability to undermine what we are trying to do”.^{xc}

Proposed requirement to stipulate the minimum number of guns

93. Across the course of the Committee's inquiry, a requirement for the licence to specify the number of guns to be used when hunting with dogs was discussed. It was proposed that specifying the number of guns would increase the likelihood of a wild mammal being quickly killed after being flushed from cover and, thus reducing the chance of a chase. Lord Bonomy agreed that the number of guns would be “vital” to killing the wild mammal.^{xcii}
94. When asked about this, NatureScot argued it “is difficult to be specific without fully understanding the demand from a licensing perspective”. It went on to highlight an issue with the lack of firearms holders in agricultural settings, arguing that “for a variety of wildlife management reasons, we still need a strong base of skilled practitioners who know what they are doing”.^{xciii}

^{lxxxvii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 19.

^{lxxxviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 20.

^{lxxxix} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 24.

^{xc} Minister for Environment and Land Reform. Written submission, 24 August 2022.

^{xc} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 25.

^{xcii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 15 June 2022*, Col 47.

^{xciii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*,

95. The Minister told the Committee that it would be difficult to include a provision relating to the number of guns in the Bill but that it could be considered as the terms of the licensing scheme are developed.^{xciv}

Design of the licensing scheme

96. More generally, some stakeholders called for a flexible and appropriate licensing system which would address their concerns and enable them to continue to use more than two dogs when controlling wild mammals.
97. Witnesses also referred to the need for the licensing scheme to be responsive, in expectation that applications would “come in bulk at certain times of the year”^{xcv} and that delays in dealing with applications would impact on land managers’ ability to control predators. Witnesses also called for licences to be affordable, referring to the scope left in the Bill for a charging system to be introduced at some point.
98. The SGA called for the licensing scheme to include a rigorous appeals process. It stressed the importance of challenges to licences to be made “only where the conditions were actually being broken, and broken consistently, and not simply because there was somebody out here who had a different view”. The SGA acknowledged that “this subject is particularly sensitive” and argued that any appeals should be properly considered and should not become a mechanism for those opposed to predator control to “put a stop to a practical situation ... the same morning”.^{xcvi}
99. When asked about the specific design of the licensing scheme, NatureScot responded that, “at this point, I would not necessarily want to pin my colours to the mast regarding the exact solution”.^{xcvii} NatureScot emphasised it was committed to a shared approach and would work together with all the relevant parties to design a licensing regime that is proportionate.^{xcviii} NatureScot agreed to provide further information about the timescale for consultation and development of the licensing scheme; at the time of publication, a rough timeline for the development of the scheme has been provided.^{xcix}
100. The Minister confirmed the Scottish Government's view that the appropriate length of time should be taken to develop a workable scheme and that it would be

Col 27.

^{xciv} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 27.

^{xcv} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 8 June 2022, Col 20.

^{xcvi} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 8 June 2022, Col 22.

^{xcvii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Col 21.

^{xcviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Col 20.

^{xcix} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Col 21.

developed in consultation with stakeholders.^c Officials went on to say that “there is no reason why we cannot start to develop that [the detail of the licensing scheme] and provide more detail as we move through the various stages of the Bill”.^{ci}

101. NatureScot also indicated the capacity for the scheme to evolve and be refined, based on experience, and that “whatever we decide to implement by way of a licensing scheme on day 1 [...] it will not necessarily tie us to that approach ad infinitum”.^{cii} It later elaborated, saying that “there needs to be some means by which we can monitor the licensing regime, receive feedback on it and continue to refine it to ensure that it delivers what it says on the tin”.^{ciii}
102. In relation to comments regarding an appeal process, the Minister confirmed that NatureScot has an established internal review and appeal process for dealing with appeals against licensing decisions which would apply to this proposed licensing scheme.^{civ}
103. Several animal welfare stakeholders from whom the Committee heard did not support the licensing scheme; a number, however, argued that, if a licensing scheme were introduced, the international principles for ethical wildlife control to guide decision-making should be used. OneKind and the SAWC argued this would ensure the licence scheme is based on evidence which prioritises animal welfare and ensures a standardised decision-making process.^{cv}
104. NatureScot told the Committee that its shared approach is “fairly well aligned” with the ethical principles.^{cvi}

The Committee notes the section 4 licensing scheme to permit hunting with more than two dogs, where certain requirements are met, and the view this could provide a mechanism to address concerns about the two-dog limit. The Committee notes, however, there are different expectations around how this licensing scheme would work; the Minister has confirmed it should not be seen as a loophole to by-pass the two-dog limit but some stakeholders consider the licence essential to continue predation control with dogs.

^c Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 20.

^{ci} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 20.

^{cii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 22.

^{ciii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 24.

^{civ} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 32.

^{cv} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 15 June 2022*, Col 31.

^{cvi} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 24.

The lack of clarity about the details of the licensing scheme has contributed to these different expectations and the Committee welcomes the Scottish Government and NatureScot’s commitment to developing the scheme, and providing further information, over the course of the Bill’s progress through Parliament. The Committee also supports the development of the licensing scheme under NatureScot’s shared approach to wildlife management.

The Committee notes the commitments made by the Scottish Government and NatureScot to consult widely with stakeholders as part of this process and highlights the comments from some stakeholders around the design of the licensing scheme. In particular, the Committee welcomes NatureScot’s reassurance that the scheme would be reviewed and revised, as necessary, as it is implemented. The Committee requests the Scottish Government update Parliament on its progress in developing the licensing scheme in advance of the Stage 1 debate.

The Committee notes the particular concerns around the requirement that a licence be valid for up to 14-days. Some stakeholders have argued that, if the Bill is to continue to enable predator control using dogs, a workable regime needs to be in place and that a 14-day licence would present significant practical challenges to predation control.

The Committee recommends the Scottish Government respond to the concerns expressed in relation to the 14-day licence scheme. The Committee requests this information be provided in advance of the Stage 1 debate to inform the Parliament’s decision on the Bill’s general principles.

Section 5 – exception: management of foxes and mink below ground

105. Section 5 introduces an exception to the offence which would permit a person to search for fox and mink below ground or to flush fox and mink from below ground with the intention of killing it.
106. Section 5(2) provides the purposes for when this exception could be used as to prevent serious damage to livestock, woodland or crops, to prevent the spread of disease and to protect human health. These are the same purposes as the section 3 exception. Section 5(3) sets out the conditions which must be met when using this exception, including that only one dog can be used for the activity. Unlike the section 3 exception, there is no provision for a licensing scheme to permit the use of more than one dog.
107. The Policy Memorandum refers to the “justifications for continuing the use of terriers

or other dogs underground to flush fox or mink” and that the limit to one dog is to reduce the risk of harm and the potential for animals to be injured or trapped underground. The Policy Memorandum also highlights the Code of Conduct of the NWTF which recommends only one dog should be used below ground at a time.^{cvii}

108. The Committee discussed this provision with Scottish Government officials, who acknowledged this “is probably one of the most polarising issues in the Bill” and stated the Scottish Government's position that the Bill meets the objectives of both animal welfare and predator control concerns.^{cviii}
109. The NWTF agreed with the section 5 exception but did not agree with either the purposes when the exception could be used or the conditions which must be met. It also set out its view that the 2002 Act is “clear and concise” and that “we do not believe there are any significant problems with the wording of the existing legislation which prevents it being understood or enforced”.^{cxix}

One-dog limit

110. The Committee discussed this condition with the NWTF during its oral evidence taking. The NWTF advised that, although the Federation advocates the use of one dog below ground “in all tight earths with defined tunnel structures”, there are other terrains where a single dog could not effectively flush out a fox or minx from below ground. The NWTF explained that—

” “In an underground situation, such as on a mountainside or rock cairn, all that would happen is that a fox would clamber to a less accessible place. The terrier would be at a different level and would not be able to get to the fox, and the fox would just ignore the dog. The fox and the terrier would stay in those positions all day long, which is not what we would want, because it would achieve nothing and, as far as we are concerned, it would be a welfare issue. [...] The moment that you entered a second terrier, that would be a complete game changer; the fox would feel that it was less safe below ground than it was above ground, and it would leave.”^{cx}

111. When asked about the animal welfare aspects of having one dog and a fox underground, the NWTF said that “in nature, animals do not fight with each other for fun; they avoid each other” and added “it is not the dog's nature to attack a fox; its nature is to bark at the fox”.^{cxii} The NWTF referred to a survey of vets, undertaken ten years ago, which suggested that serious work-related injuries to terriers were rare.^{cxii}

^{cvii} Policy Memorandum, paragraphs 74-70.

^{cviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 1 June 2022*, Col 18.

^{cix} National Working Terrier Federation. [Written submission to the call for views](#).

^{cx} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Cols 3-4.

^{cxii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 17.

^{cxii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 18.

112. Representatives from animal welfare organisations, however, did not support the use of dogs below ground. Witnesses argued it was not possible to control a dog below ground and that it was difficult to avoid conflict between the dog and the wild mammal it was searching for. The SSPCA argued it is “quite common” to see terriers with injuries from foxes^{cxiii} and described what can happen when you put a terrier underground—

” “Terriers do what terriers do. If they are under the ground and the fox is lucky enough to just bolt and get out, it will get away from the terrier, but, if it stays down there, they will face off. Foxes will bite anywhere they can – they are just defending themselves.”^{cxiv}

113. The SAWC agreed, stating two animals below ground, with “absolutely no chance of controlling the dog” represented a “serious welfare concern”.^{cxv}

114. The SSPCA also argued against using more than one dog below ground, saying that “if you get two terriers in a heightened state, they will bite each other – it is not just the fox that they will go for”^{cxvi} and that two dogs below ground would be “doubling the chance of the dogs engaging face-on-face with the fox”.^{cxvii}

115. When asked about this, the Minister recognised “this is probably one of the most vexed issues, because we are presented with something that is between a rock and a hard place”.^{cxviii} The Minister gave the Scottish Government's view that the one-dog limit “aims to strike a balance” between, on the one hand, some people's view that using a dog below ground is a necessary part of predator control and, on the other hand, “very real concerns” about the animal welfare implications for both the dogs and wild mammals.^{cxix}

Requirement for the dog to be kept under control

116. Section 5(3)(b) establishes the condition that the dog used below ground is kept under control; ‘under control’ is later defined under section 22 as being able ‘to direct the dogs activity by physical contact or verbal or audible command’. The NWTF highlighted its “very major concern” at this condition as—

^{cxiii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 28.

^{cxiv} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 29.

^{cxv} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 29.

^{cxvi} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 29.

^{cxvii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 30.

^{cxviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 19.

^{cxix} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 19.

” “One of the fundamental requirements in relation to the use of dogs below ground is that silence should be maintained at all times. It is an essential part of this process, that the fox (or mink) feels it is much safer to be above ground, rather than to stay where it is and be chided by an annoying little terrier dog. To engage in any sort of “verbal or audible command” would only serve to destroy that illusion, it would discourage the fox (or mink) from vacating its earth and create an underground stand-off situation. Clearly, as the dog is below ground “physical contact” is neither a sensible nor a viable option.”^{cxx}

117. The NWTF argued this requirement “would effectively prevent the use of dogs below ground”.^{cxxi}

118. The NWTF highlighted that its Code of Conduct specifies the use of electronic locator collars as “essential”. The NWTF suggested that the definition of ‘under control’ be amended to include this or to reflect the definition used in the 2002 Act which includes the alternative that “the dog is carrying out a series of actions appropriate to the activity undertaken, having been trained to do so”.^{cxxii}

Animal welfare conditions set out in the 2002 Act

119. The NWTF also highlighted two 2002 Act requirements that are not included in the Bill but which, in its view, should be.^{cxxiii} First, the requirement that ‘reasonable steps’ are taken to ensure that the fox or mink ‘is flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed’ (section 2(3)(b) of the 2002 Act). The second is the requirement that ‘all reasonable steps to prevent injury to the dog including steps to prevent the dog becoming trapped underground and, if it does become trapped underground, steps to ensure it is rescued as soon as is practicable’ (section 2(3)(c) of the 2002 Act). The SSPCA also highlighted the omission of this provision and called for the Bill to be amended to include it.^{cxxiv}

120. When giving oral evidence, the NWTF referred to a number of additional questions and concerns relating to section 5 and it provided supplementary written evidence in relation to these after the Committee’s meeting.^{cxxv}

The Committee notes the Scottish Government’s view that some provision should be made to permit the use of dogs below ground and that the one-dog limit “strikes the balance” between predation control and animal welfare.

^{cxx} National Working Terrier Federation. Written submission to the call for views.

^{cxxi} National Working Terrier Federation. Written submission, 23 June 2022.

^{cxxii} National Working Terrier Federation. Written submission, 23 June 2022.

^{cxxiii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 27.

^{cxxiv} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 39.

^{cxxv} National Working Terrier Federation. Written submission, 23 June 2022.

The Committee also, however, notes the concerns raised by animal welfare organisations that even one dog below ground could raise animal welfare concerns. The Committee also notes the view of the NWTF that the requirement to keep a dog being used below ground under control by physical or verbal/audible command would alert the fox or mink to the presence of humans above ground and would compromise the effectiveness of the exercise.

It is not clear to the Committee, therefore, that the use of dogs at all below ground is compatible with the Bill's pursuit of the highest possible animal welfare standards. It is also not clear to the Committee how the exception would work, given the dog handler's preference for silence and the Bill's requirement for a verbal or audible command.

The Committee recommends the Scottish Government respond to this point in advance of Stage 1 in order to inform Parliament's consideration of the general principles. The Committee also recommends the Scottish Government respond to the specific provisions relating to the animal welfare conditions which have not been replicated from the 2002 Act.

Section 6 – exception: falconry, game shooting and deer stalking

121. Section 6 introduces an exception to permit a person using a dog above ground either to search for, stalk or flush from cover a wild mammal with the intention of providing quarry for falconry or game shooting/deer stalking or to search for and retrieve a wild mammal which has been killed as a result of this activity.
122. Section 6(2) sets out the conditions which must be met when using this exception, including that only two dogs can be used for the activity. Unlike the section 3 exception, here is no provision for a licensing scheme to permit the use of more than two dogs.
123. The Policy Memorandum states this exception relates to field sports and could be used, for example, to locate a deer which has been shot and wounded in order for it to be humanely despatched or to flush a wild mammal so it can be killed by a bird of prey.^{cxxvi}
124. The SSPCA and OneKind objected to the inclusion of an exception for sport. The SSPCA told the Committee it does “not accept the use of dogs for any kind of pastime or sport” based on the view that hunting with dogs for sport is not essential, unlike pest control or environmental protection.^{cxxvii}

^{cxxvi} Policy Memorandum, paragraph 41.

^{cxxvii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 38.

125. No further issues were raised in relation to falconry and deer stalking.
126. Issues were raised with the Committee, however, in relation to ground or mixed (rough) game shooting in the light of the definition of wild mammal being extended to include rabbits. This activity tends to involve a number of participants, who would typically bring one or two dogs and the Bill would make such an activity (where it involves more than two dogs and ground game is being hunted) illegal.
127. The Minister confirmed that, where more than two dogs were used in game shooting and where there was an intention to kill a wild mammal, an offence would be committed. Where game shooting using more than two dogs was for birds, and a rabbit was inadvertently flushed from cover and chased in the process, the Minister confirmed this would not be an offence because there had been no intention to hunt for the rabbit.
128. The British Association for Shooting and Conservation (BASC) also highlighted an issue with the section 6(2)(e) requirement that the wild mammal must be shot dead or killed by a bird of prey. It pointed out that those who flush rabbits to nets and then kill by hand, or where occasionally a dog may catch or retrieve an uninjured rabbit which would then be killed by hand, would be committing an offence.^{cxxviii}

The Committee would welcome further information about why an exception for falconry has been included in the scope of the Bill. The Committee has no other comments to make on section 6 in so far as it relates to falconry and deer stalking

In relation to game and rough shooting with dogs, the Committee notes the concerns raised by some stakeholders about how the exception would work in practice. First, concerns were raised about the impact of the two-dog limit on game and rough shooting. The Minister has been very clear that game and rough shooting could only use up to two dogs to hunt wild mammals. The Committee asks the Scottish Government to respond to the concerns raised in relation to rough shooting.

Second, concerns were raised about the section 6(2)(e) requirement that wild mammals being searched for, stalked or flushed could only be shot dead or killed by a bird of prey. The Committee heard concerns that, in those situations where rabbits are killed by hand to sell to market or accidentally by a dog whilst being retrieved, an offence may be committed. The Committee asks the Scottish Government to address this issue in its response to this Stage 1 report.

Section 7 – exception: environmental benefit

129. Section 7 introduces an exception to the offence which would permit a person either to search for, stalk or flush from cover a wild mammal with the intention of killing,

cxxviii British Association for Shooting and Conservation. [Written submission to the call for views.](#)

capturing or observing it or to search for and retrieve a wild mammal which has been killed as a result of this activity.

130. Section 7(2) provides the purposes for when this exception could be used as to preserve, protect or restore a particular species; to preserve, protect or restore the diversity of animal or plant life; or to eradicate an invasive non-native species from an area. Section 7(3) sets out the conditions which must be met when using this exception; one condition is that only two dogs can be used for the activity, unless a section 8 licence has been granted.
131. The 2002 Act does not include an exception for environmental benefit.
132. The Committee took evidence from the Game and Wildlife Conservation Trust and RSPB Scotland who both welcomed the introduction of this exception. RSPB Scotland said that one of its concerns about the 2002 Act is that it does not provide for the control of wild mammals for environmental purposes and that this failed to recognise that invasive non-native species are “one of the main drivers of biodiversity loss”.^{cxxix}
133. OneKind highlighted a “little bit of a discrepancy” whereby the Bill provides for up to two dogs to search for and retrieve a wild mammal which has been killed but does not mention an animal which has been wounded.^{cxxx}
134. During oral evidence, RSPB Scotland raised a question in relation to the definition of invasive non-native species and, specifically, the provision at section 7(4)(b)(i) that a species is ‘not native to the area’ in which the hunting with dogs takes place. RSPB Scotland sought clarification as to how ‘area’ would be interpreted – for example, by the specific location, a local, regional or national location – and expressed a preference for a biogeographical approach rather than a jurisdictional approach to defining whether a species is native. It suggested that a biogeographical approach would be consistent with the Wildlife and Countryside Act 1981. Scottish Government officials subsequently confirmed that hedgehogs in Uist and stoats in Orkney would fall under this category.^{cxxxii}
135. The Law Society of Scotland also raised a concern relating to the definition of ‘invasive non-native species’, highlighting that it refers to a wider species list set out in a post-EU exit regulation and suggesting a clearer definition should be given.^{cxxxiii} In response to this point, the Minister stated the definition is “one that is used across the piece in legislation” and that Scottish Ministers have the power to amend the list, if necessary.^{cxxxiii}

^{cxxix} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 8 June 2022, Col 36.

^{cxxx} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 15 June 2022, Col 36.

^{cxxxii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 18.

^{cxxxiii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Cols 8-9.

^{cxxxiii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 17.

136. When giving oral evidence, RSPB Scotland referred to a number of additional questions and concerns relating to section 7 that it had set out in its written evidence “to ensure in particular that there are no unintended consequences of the Hunting with Dogs Bill which would impede bona fide operational conservation work”. One of these relates to a similar point raised in connection with section 6, the requirement at section 7(3)(e)(ii) that a wild mammal is shot dead or killed by a bird of prey as soon as reasonably possible after being searched for, stalked or flushed from cover. RSPB Scotland highlighted that the most welfare-friendly means of disposal for an invasive non-native species may be by methods other than shooting or by a bird of prey by, for example, the use of approved spring traps. Accordingly, RSPB Scotland suggested an amendment to section 7(3) to permit the use of approved spring traps.

The distinction between the section 3 exception for land management and the section 7 exception for environmental benefit

137. Some witnesses questioned the distinction between the section 3 exception for the management of wild mammals above ground and the section 7 exception for environmental benefit. Referring to farmers’ and land managers’ roles as conservationists and the increasing focus on protecting Scotland’s biodiversity, they suggested there was “a massive overlap” between the impact of predators on agricultural damage and the impacts on biodiversity. The NFUS argued that controlling wild mammals for environmental benefit “is basically the same activity as the use of more than two dogs to prevent agricultural damage” and that “both activities produce the same results, effectively”.^{cxxxiv} The rural sector argued this overlap blurred activity under section 3 and section 7 and that this was especially pertinent given the different provisions for the relevant proposed licensing schemes.
138. The Committee explored the above concerns regarding the exceptions for agricultural and environmental benefit with the Minister. Officials acknowledged there may be situations where protecting livestock may “benefit species other than the livestock that is being protected”, but the Minister explained that “there is a practical distinction between someone who requires assistance with the protection of livestock and a long-term project for the eradication of an invasive non-native species on an island. The welfare issues are not different, but they are different activities.”^{cxxxv} Officials went on to clarify that permitted activities under section 7 include capturing and observing whereas section 3 only permits killing to protect livestock.^{cxxxvi} The Minister indicated that the detail of the licensing schemes, which have yet to be worked out, should help to clarify the distinction between the two exceptions but that the Scottish Government’s aim is to reflect the ways that people use dogs for land management.

The Committee notes some stakeholders’ support for the general principle of an

^{cxxxiv} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 19.

^{cxxxv} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 22.

^{cxxxvi} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 22.

exception for environmental benefit and is content with section 7.

The Committee notes the point raised by OneKind that the Bill does not seem to provide for the use of two dogs to search for and retrieve a wild mammal which has been injured. The Committee requests the Scottish Government address this point in advance of Stage 2.

Concerns were raised about the section 7(3)(e)(ii) requirement that wild mammals being searched for, stalked or flushed be shot dead or killed by a bird of prey. It was argued this may mean that alternative, more “welfare-friendly” methods could not be used. The Committee asks the Scottish Government to address this issue in its response to this Stage 1 report.

Section 8 – licence for use of more than two dogs in connection with section 7

139. Section 8 introduces a licence scheme to permit the use of more than two dogs when undertaking an activity under section 7 of the Bill. As with the licensing scheme established under section 4, the scheme would be administered by Scottish Natural Heritage (known as NatureScot).
140. Section 8(4) sets out the requirements of the licensing scheme; amongst other provisions, the Bill states a licence would only be granted where NatureScot is satisfied that killing, capturing or observing the wild mammal would contribute towards “significant or long-term environmental benefit” and that there is no effective alternative solution to using more than two dogs (section 8(4)(c)); that NatureScot would only permit the minimum number of dogs it is satisfied would achieve the purpose effectively (section 8(4)(d)); and that a licence would be granted for a maximum period to two years which must fall within a period of two consecutive years (section 8(4)(f)).
141. The Policy Memorandum provides further information relating to the time period for a section 8 licence, stating that NatureScot would only issue licences for the period of time necessary to achieve the purpose of the activity but that “this type of licence would allow conservation bodies to undertake longer term wildlife management projects ... for example, in the search for hedgehogs on Uist, so that they can be trapped and returned to the mainland in order to protect the eggs of ground nesting birds on the island”^{cxxxvii}.
142. The Committee discussed the licensing scheme, and specifically the two-year licensing period, with Scottish Government officials. They stated the Scottish Government's view that would not be practical or effective to require established, long-running schemes with an environmental purpose and which use dogs to have

^{cxxxvii} Policy Memorandum, paragraphs 61-63.

to apply for a licence on a more regular basis. Officials drew a comparison with other licensing provisions under the Wildlife and Countryside Act 1981.^{cxxxviii}

143. No concerns or comments were raised by stakeholders during oral evidence in relation to the section 8 licensing scheme, although concerns were raised about the two-year timescale being too long in written evidence.

The Committee makes no comment on section 8.

General provision on licences (sections 9 and 10)

144. Sections 9 and 10 make further provision relating to the two licensing schemes. Section 9 provides that Scottish Ministers may delegate their functions relating to the schemes to Scottish Natural Heritage, known as NatureScot; that delegations must be made by a written direction; and other general provisions relating to the written directions. Section 10 creates an offence of providing false information to obtain a licence. A person who commits an offence under section 10 is liable on summary conviction to imprisonment for up to six months and/or a fine up to level five on the standard scale.
145. Witnesses who gave evidence to the Committee agreed that NatureScot was the most appropriate body to administer the two licensing schemes.
146. The Committee considered NatureScot's ability and expertise to administer the licensing scheme. Many stakeholders from the rural sector expressed concern that NatureScot "has neither the resources nor the expertise to deal with licensing".^{cxxxix} Accordingly, stakeholders called for NatureScot to ensure it has sufficient resources and expertise about the challenges and terrain at local level in order to design and implement a 'fit for purpose' licensing system.
147. NatureScot addressed this concern when it gave evidence on 22 June. It referred to its existing role of issuing 4,500 to 5,000 individual species licences ever year which, it argued, gave it "a lot of experience in providing and enabling a targeted risk-based approach to licensing that is in line with the principles of better regulation, and trying to do that in a proportionate and transparent way".^{cxli}
148. It also highlighted the uncertainties around the likely demand for licences, its witness arguing "I suspect that what we are talking about here is a relatively small proportion of fox control, but we will not really understand that until we start to receive that demand".^{cxli}

^{cxxxviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 1 June 2022*, Col 22.

^{cxxxix} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 10.

^{cxli} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 9.

^{cxli} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 20.

149. When asked about NatureScot's capacity to administer the licensing schemes effectively, the Minister referenced her and officials' discussions with NatureScot "to ensure that there is a clear understanding about the extra work that comes with an additional licensing scheme" and that NatureScot "has assured" Scottish Ministers that the additional work is manageable within its existing budget.^{cxlii}

The Committee notes, and agrees with, the support for NatureScot to administer the section 4 and section 8 licensing schemes.

The Committee also notes, however, the concerns raised with it regarding NatureScot's capacity to undertake this additional role. The Committee notes NatureScot's and the Scottish Government's assurances that NatureScot has sufficient expertise and resources to administer the schemes. The Committee asks the Scottish Government, however, in its response to this report, to set out how it intends to support and monitor NatureScot's performance as licence scheme administrator.

The Parliament also has a role in holding NatureScot to account. NatureScot falls within the net zero, energy and transport ministerial portfolio and the Committee recommends the Net Zero, Energy and Transport Committee, whose remit is to scrutinise the corresponding ministerial portfolio, to consider this as part of its oversight of NatureScot.

^{cxlii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 30.

PART 2 – TRAIL HUNTING

Section 11 – offences relating to trail hunting

150. Section 11 introduces new offences for engaging or participating in trail hunting, as well as for a land manager or owner to allow trail hunting to take place on the land over which they have authorisation, unless the exception in Section 12 applies.
151. Trail hunting is defined in Section 11(2) as “the activity in which a dog is directed to find and follow an animal-based scent which has been laid for that purpose”; an animal-based scent is one which has been derived from a wild mammal or artificially mimics, replicates or resembles a scent of a wild mammal. In practice, trail hunting is where people on foot or horseback follow a laid scent (for example, an animal-based scent such as fox urine) along a pre-determined route with a group of dogs.
152. The Policy Memorandum sets out that the Bill takes “pre-emptive action to prevent trail hunting becoming established in Scotland” as occurred in England and Wales in response to the prohibition of hunting mammals with more than two dogs by the Hunting Act 2004.^{cxliii}
153. Scottish Government officials expanded on why trail hunting has been included in the Bill when they gave evidence to the Committee. They highlighted that, after a successful prosecution in England and Wales which found that trail hunting had been used as a cover for a traditional mounted hunt, trail hunting has been banned on land owned by the Welsh Government and the National Trust. Officials confirmed the Bill aims to “take away the element of risk involved in laying mammal-based scents, which provides a loophole for people illegally hunting and causing serious welfare concerns”.^{cxliv}
154. Representatives of animal welfare groups supported the proposed ban. The SSPCA stated that trail hunting “was a way of continuing to perform the pastime” of hunting with packs of dogs.^{cxlv}
155. Some stakeholders, however, questioned the ban given trail hunting is not generally practised in Scotland. The SCA suggested that, as trail hunting currently does not regularly take place “you have to draw an inference as to why it is being targeted and whether it is a targeted attack on traditional hunting”. It went on to suggest that banning trail hunting, at the same time as introducing a limit on the number of dogs which may be used when hunting, “would be removing what could be a big benefit for a local community in mental health and economy terms”.^{cxlvi} Police Scotland also made the point that, just because trail hunting has been used to disguise illegal hunting in England and Wales, it “is not necessarily a reason to make trail hunting illegal” in Scotland.^{cxlvii}

cxliii Policy Memorandum, paragraphs 77-80.

cxliv Rural Affairs, Islands and Natural Environment Committee. *Official Report, 1 June 2022*, Cols 31-32.

cxlv Rural Affairs, Islands and Natural Environment Committee. *Official Report, 15 June 2022*, Cols 37-38.

156. The Minister elaborated on the Scottish Government's reasons for the ban when she gave evidence—

” “First, we think that there is an animal welfare risk in that an animal that is trained to follow an animal-based scent can easily pick up the scent of an animal elsewhere and begin the chase and kill, which is exactly what we are trying to stop. Second, we are trying to ban it because we have evidence from down south that trail hunting is being used as a cover for the continuance of illegal hunting, so we want to prevent that from beginning in Scotland.”^{cxlviii}

The Committee notes the Scottish Government's reasons to ban trail hunting is to prevent it being used as a cover for hunting wild mammals, in the event of this Bill making it an offence to hunt with more than two dogs. The Committee notes the growth of trail hunting as a result of the ban on hunting with more than two dogs in England and Wales and, on this basis, supports section 11.

Section 12 – exception: training dogs to follow an animal-based scent

157. Section 12 of the Bill sets out an exception to the prohibition on trail hunting for the purpose of training dogs to follow an animal-based scent. The section applies if a person directs a dog to find and follow an animal-based scent which has been laid for that purpose or lays an animal-based scent for a dog to find and follow to train that dog for a lawful purpose. It is not permitted to use more than two dogs at one time.

158. Witnesses agreed that an exception to allow for training dogs was essential. The SCA said that dogs must be trained in realistic circumstances^{cxlix} and NatureScot stressed the importance of being trained “for very specific things”, such as retrieving wild deer or an invasive non-native species, “in order for us to realise our vision for a nature-rich future.”^{cl}

159. The two-dog limit for the exception drew some criticism, however, from a range of stakeholders. The SCA highlighted the importance of dogs being trained as part of a larger pack—

^{cxlvi} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 8 June 2022, Col 28.

^{cxlvii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Col 25.

^{cxlviii} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, cols 33-34.

^{cxlix} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 8 June 2022, Col 28.

^{cl} Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Col 26.

” “It must be understood that the older dogs in the pack can keep the younger dogs in line. Effectively, the older dogs take on some of the training of the younger dogs. If a younger dog strays away from the scent, the older dog will scold it and bring it back. Without the dogs being trained to do that – if that capability was not there – things would be a lot more difficult.”^{cli}

160. Police Scotland raised concerns that the exemption may pose logistical challenges in the training of emergency service dogs. It explained that Police Scotland train up to six cadaver dogs with animal-based scents at the one time and that a two-dog limit would “likely have an impact on resourcing”.^{clii} Police Scotland supported an amendment to the Bill to exempt emergency dogs.^{cliii}

161. In response to Police Scotland's concerns, the Minister indicated that was “an important point; it had not been raised with me previously but, now that it has been, I will consider how we can accommodate the training of police dogs”.^{cliv}

The majority of the Committee supports the section 12 exception to train dogs to follow an animal-based scent.^{clv} The Committee notes, however, concerns raised with it about the impact of the two-dog limit on current training practices and asks the Scottish Government to address this issue in its response to this Stage 1 report.

^{cli} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 8 June 2022*, Col 29.

^{clii} Police Scotland. [Written submission](#), 1 July 2022.

^{cliii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 25.

^{cliv} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 34.

^{clv} One member did not support the section 12 exception to train dogs to follow an animal-based scent.

PART 3 – FURTHER PROVISION RELATING TO OFFENCES

162. Part 3 of the Bill makes provision relating to the enforcement of the sections 1 and 2 offences and any related court proceeding.
163. Section 13, and the schedule, provides for police powers of enforcement.
164. Sections 14 and 15 set out provisions relating to court proceedings. Section 14 replicates the time-limit for summary proceedings of the 2002 Act, with a general time limit of six months for offences under sections 2 and 11; there is no time limit for a section 1 offence. Section 15 provides that an individual can be held responsible where an organisation commits an offence.
165. Sections 16 to 20 make provision for court orders. Section 16 introduces a deprivation order which would allow the court to be made in relation to any dogs or horses used in relation to an offence. The Policy Memorandum states that “the policy intent behind this provision is to ensure that anyone convicted of a relevant offence is deprived of the ‘tools’ used in the commission of that offence”.^{clvi} Section 17 replicates the provisions in the 2002 Act in relation to disqualification orders which would allow the court to make an order relating to the care/disposal of an offenders’ dog or to disqualify the offender from having custody of a dog. The Policy Memorandum states section 17 “provides greater transparency in relation to the orders and greater clarity in relation to the process of seizure of animals”.^{clvii} Section 18 provides the power to seize a dog where a disqualification order has been breached; section 19 provides an offender subject to a disqualification order the right to request the court to terminate or vary the order; and section 20 sets out an appeals process.
166. Police Scotland confirmed that the powers in the Bill are “very consistent, which makes enforcement more straightforward” with similar provisions in other wildlife legislation.^{clviii} Police Scotland also, however, highlighted a concern that the Bill does not include any power to arrest or search persons; unlike the 2002 Act which provides “really effective” powers “which is key in gaining evidence of offences”.^{clix}
167. When asked about this, the Minister said that the absence of stop-and-search powers reflects the Animal health and Welfare (Scotland) Act 2006 which does not contain such powers.^{clx}

clvi Policy Memorandum, paragraph 92.

clvii Policy Memorandum, paragraph 89.

clviii Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Col 25.

clix Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 22 June 2022, Col 18.

clx Rural Affairs, Islands and Natural Environment Committee. *Official Report*, 29 June 2022, Col 34.

168. The issue was raised that the section 16 deprivation orders would only be available to dogs and horses and not, for example, quad bikes and other vehicles which might be used when carrying out an offence. Scottish Government officials clarified that the courts already have a power to seize vehicles used in an offence under the Proceeds of Crime Act 2002.^{clxi}
169. Police Scotland suggested that deprivation orders made under section 16 should also include that certain people should not be permitted to reside in the same house as a dog. It argued that this “would negate the excuse that the dog belongs to the person's wife or son, for example, which is an excuse that we encounter”.^{clxii}

The Committee notes that Part 3 of the Bill largely replicates the provisions already in place under the 2002 Act. The Committee highlights, however, the introduction of deprivation orders at section 16 which would allow the court to remove dogs or horses used in the course of any offence. The Committee also highlights Police Scotland's suggestion that section 16 should be amended; otherwise, the Committee makes no comment on part 3 of the Bill.

^{clxi} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 1 June 2022*, Col 33.

^{clxii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 22 June 2022*, Col 27.

PART 4 – GENERAL PROVISIONS

170. Part 4 of the Bill makes general provisions relating to the Bill.
171. Section 21 would give Scottish Ministers to power to make regulations required “in connection with or for giving full effect to this Act”.
172. Section 22 sets out relevant definitions and section 23 would repeal the 2002 Act.
173. Section 24 provides that the monarch cannot be found criminally liable but that anyone else who commits an offence on crown land can be found liable; section 25 makes provision for powers of entry on Crown land. Section 26 relates to commencement of the Bill and section 27 to the short title.
174. The Bill confers two powers – in section 21 and section 26 – to make subordinate legislation on the Scottish Ministers. The DPLRC considered these provisions and determined that it did not need to draw the Parliament's attention to the delegated powers in either of the provisions.^{clxiii}
175. No issues were raised in relation to part 4 with the Committee over the course of its stage 1 inquiry.

The Committee notes the Delegated Powers and Law Reform Committee's decision that it did not need to draw the Parliament's attention to the two delegated powers provisions at section 21 and section 26. The Committee makes no further comment on part 4 of the Bill.

^{clxiii} Delegated Powers and Law Reform Committee. 19th Report, 2022 (Session 6). *Hunting with Dogs (Scotland) Bill* (SP Paper 139).

Costs

176. As part of its consideration of the Bill, the Committee considered the estimated costs as set out in the FM.

Estimated costs for the Scottish administration

177. The FM estimates that there would not be any meaningful introductory costs for the Scottish administration.^{clxiv}

178. In terms of ongoing costs associated with court procedures, the FM identifies the Bill “may initially result in a small increase in court cases relating to offences of hunting a wild mammal using a dog because the Bill removes some of the current barriers to enforcement of the existing prohibition”.^{clxv} However, the Scottish Government expects that the greater clarity afforded in the Bill would lead to a longer-term reduction in the total number of cases brought before court.

179. For the Scottish Prison Service, the FM noted that any extra costs would relate to any increased number of prosecutions leading to custodial sentences but anticipates “it is unlikely that there will be such an increase in the number of cases receiving a custodial sentence, and the actual costs are likely to be close to the current scenario”.^{clxvi}

180. The FM recognises that the introduction of a licensing scheme would result in an additional cost on NatureScot as the licensing authority.^{clxvii} This cost has been estimated at between £29,500 to £118,000 per annum based on an additional 1000 licences processed by NatureScot with corresponding appeals and an average cost per licence of £113.^{clxviii}

181. The FM refers to the potential for the full cost recovery of the additional administrative costs to NatureScot for processing the licensing system. As set out elsewhere in this report, the Scottish Government's Shared Policy Programme with the Scottish Green Party contains a commitment to review the wider species licensing system.

182. Were such a full cost recovery model be introduced under the provisions of the Bill, the FM goes on to state that, “it is anticipated that the cost of administering the licenses would be balanced out by the revenue received from the licence applicants and the scheme would therefore operate on a cost neutral basis”.^{clxix}

Estimated costs for local authorities

clxiv [Hunting with Dogs \(Scotland\) Bill. Financial Memorandum](#) (SP Bill 12-FM, Session 6 (2022)), paragraphs 14-16.

clxv Financial Memorandum, paragraph 18.

clxvi Financial Memorandum, paragraph 39.

clxvii Financial Memorandum, paragraph 43.

clxviii Financial Memorandum, paragraphs 44-45.

clxix Financial Memorandum, paragraph 50.

183. The FM states that, as the enforcement of any wildlife legislation is the responsibility of Police Scotland rather than local authorities, the Bill “will not introduce any new responsibilities for local authorities and as such will not result in any additional costs to local authorities”.^{clxx}

Estimated costs for other bodies, individuals and businesses

184. The FM states that there are “no costs on other bodies, individuals and businesses from the provisions of the Bill”.^{clxxi}

185. As already noted, however, the Bill would provide Scottish Ministers with the power to introduce charges for the recovery of costs for NatureScot to process the licence scheme. Should a full cost recovery model be introduced at a later date, as detailed in the FM, the cost per licence payable by an applicant could be £113 based on the current average costing for NatureScot to process a licence.^{clxxii}

186. The Committee discussed the estimated annual cost for NatureScot of £118,000 with the Scottish Government and sought clarification on whether any consideration had been given to charging for licences. Scottish Government officials explained that “all wildlife legislation – currently, the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats, &c) Regulations 1994 – is not run on a cost-recoverable basis, but there is provision for NatureScot to bring that in administratively, should it wish to do so”.^{clxxiii}

187. The SCA and the SGA both raised the issue of licensing fees and potential financial loss to farmers and operators of professional foot packs. The SCA argued that “the picture presented in the FM is wildly optimistic and the bald statement that ‘there are no costs on other bodies, individuals and businesses arising from the provisions of the Bill’ is demonstrably false”.^{clxxiv}

188. In relation to the potential cost for an applicant to obtain a licence under the full cost recover model set out in the FM, the SCA noted that this may result in applicants paying for multiple 14-day licences and put forward the view that “would represent a direct cost to the applicant and be an additional cumulative cost to the farming industry and to conservation efforts”.^{clxxv}

189. Both the SCA and the SGA questioned the estimated costs for NatureScot as set out in the FM. The organisations suggested the costs for NatureScot to administer a licensing scheme would be higher than those detailed in the FM on account of the possible need for training of new staff to keep pace with the demand for licences and the potential need for site visits by NatureScot staff to remote areas to assess the permissibility of applications for licences.

^{clxx} Financial Memorandum, paragraph 46.

^{clxxi} Financial Memorandum, paragraph 47.

^{clxxii} Financial Memorandum, paragraph 49.

^{clxxiii} Rural Affairs, Islands and Natural Environment Committee. *Official Report, 29 June 2022*, Col 33.

^{clxxiv} Scottish Countryside Alliance. [Written submission to the call for views on the Financial Memorandum](#).

^{clxxv} Scottish Countryside Alliance. [Written submission to the call for views on the Financial Memorandum](#)

The Committee notes the projected costs set out in the financial memorandum.

Conclusion

In this report, the Committee has set out a record of its stage 1 inquiry and detailed the range of issues and outstanding questions about the Bill's provisions.

The Committee has highlighted a number of points it considers further information or explanation would help inform the Parliament's consideration of the general principles. The Committee recommends the Scottish Government provide this information ahead of the stage 1 debate.

Notwithstanding these points, the Committee is content to agree to the general principles.

